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Comcast files FCC impotence suit

By [Cade Metz in San Francisco](#)

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As expected, Comcast has appealed the [landmark FCC order](#) (http://www.theregister.co.uk/2008/08/01/fcc_comcast_reaction/) that sanctioned the American ISP for [secretly blocking](#) (http://www.theregister.co.uk/2008/08/06/comcast_lies/) BitTorrents and other peer-to-peer traffic.

But the [meatpuppeting](#) (http://www.theregister.co.uk/2008/02/27/comcast_rigs_net_neutrality_hearing/) cable outfit says it will comply with the order while its appeal plays out in federal court. Under the [order \(PDF\)](#) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-183A1.pdf), Comcast has until September 19 to completely disclose its discriminatory network management practices and show how it intends to stop these practices by year's end.

"Although we are seeking review and reversal of the Commission's network management order in federal court, we intend to comply fully with the requirements established in that order, which essentially codify the voluntary commitments that we have already announced, and to continue to act in accord with the Commission's Internet Policy Statement," reads a canned statement from Comcast executive vp David Cohen.

"Thus, we intend to make the required filings and disclosures, and we will follow through on our longstanding commitment to transition to protocol-agnostic network congestion management practices by the end of this year."

In early August, after a 3-2 split decision, the FCC's five commissioners told the world Comcast had violated the so-called Internet Policy Statement, a 2005 document that seeks to protect the rights of America's net users. But Comcast has said that the statement ["does not create legally binding obligations"](#) (http://www.theregister.co.uk/2008/03/19/comcast_fcc_legal_authority/)."

Comcast's filing with the US Court of Appeals for the District of Columbia does not detail its complaint with the FCC. But David Cohen gives a hint. "We filed this appeal in order to protect our legal rights and to challenge the basis on which the Commission found that Comcast violated federal policy in the absence of pre-existing legally enforceable standards or rules," his statement continues.

"We continue to recognize that the Commission has jurisdiction over Internet service providers and may regulate them in appropriate circumstances and in accordance with appropriate procedures. However, we are compelled to appeal because we strongly believe that, in this particular case, the Commission's action was legally inappropriate and its findings were not justified by the record."

Why is Comcast appealing if it intends to comply with the order? Well, there's compliance and then there's compliance. Comcast may disclose every detail behind its BitTorrent-busting to the FCC, but you can bet that certain details will be shared under protective order - so that no one else can see them.

"Although Comcast will make the required filing and disclosures, you can expect them to do it under an agreement sealing at least part of the information as proprietary until the case is resolved by the court of appeals," says Jonathan Kramer, a telecoms attorney with the Los Angeles-based [Kramer Telecom Law Firm](http://www.telecomlawfirm.com/) (<http://www.telecomlawfirm.com/>). "That way, they can both comply with the order and protect their rights until those rights are adjudicated."

You see, Comcast is appealing in an effort to keep the particulars of its BitTorrenting busting confidential. The ISP is also facing [multiple class action lawsuits](http://www.theregister.co.uk/2008/06/05/comcast_blacklists/) (http://www.theregister.co.uk/2008/06/05/comcast_blacklists/) that accuse it of "deceiving and misleading" with its P2P throttling - which it kept secret for at least ten months. Perhaps more. And if Comcast is forced to reveal the details publicly, it gives such suits all the ammunition they need.

Comcast tells us it's still mulling the particulars of its disclosure to the FCC. But the company indicated that certain information may be kept confidential. "We're still in the process of gathering the information and we don't know yet how much of it will be public," says company spokeswoman Sena Fitzmaurice. "The FCC has asked that the information be made public, but if there is information that we consider proprietary, we might request that it not be made public." ®

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